

JUN 8 0 2009

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
MUR 6109 ) CASE CLOSURE UNDER THE  
BILL DURSTON ) ENFORCEMENT PRIORITY SYSTEM  
DURSTON FOR CONGRESS AND )  
RITA COPELAND, AS TREASURER )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6109 as a low-rated matter.

The complainant, Lungren for Congress, claims that congressional candidate Dr. Bill Durston and his campaign committee, Durston for Congress and Rita Copeland, in her official capacity as treasurer ("the Committee"), aired two advertisements containing insufficient disclaimers. Specially, the complainant asserts that the advertisements, which are characterized as "televised," were aired on two Youtube.com websites. According to the complainant, the advertisements failed to include written statements that Dr. Durston approved the advertisements, as set forth in 2 U.S.C. § 441d(d)(2) and 11 C.F.R. § 110.11(c)(3)(iii) (requiring specific disclaimer requirements for television advertisements

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1 must include written statement of approval by candidate).<sup>1</sup> The complainant provides no  
2 additional identifying information concerning the advertisements.

3 Dr. Durston, apparently replying on behalf of his committee and himself, asserts that  
4 he was able to access only one of the two websites provided by the complainant and that the  
5 website included a YouTube version of one of his television advertisements. Moreover, he  
6 asserts that his Committee was not responsible for posting the television advertisements in  
7 question to YouTube. According to Dr. Durston, the individual who produced his television  
8 advertisements was experienced in producing political advertisements, and informed  
9 Dr. Durston that the oral statement "I'm Dr. Bill Durston and I approve this message,"  
10 coupled with the written statement "Paid for by Durston for Congress," were sufficient to  
11 satisfy the "letter and spirit" of FEC regulations. He does not specifically address the  
12 complainant's contention that a written statement of approval was required.

13 To the extent that the advertisements appeared on television, appropriate disclaimers  
14 were required, including written statements of the candidate's approval of the message, as set  
15 forth in 11 C.F.R. § 110.11(c)(3)(iii). Unfortunately, this Office was unable to access and  
16 assess the advertisements in question to confirm their content. Based on Dr. Durston's  
17 response, it appears that the television version of one of his campaign's YouTube.com  
18 advertisements may not have included the appropriate written disclaimer. However, given  
19 that the advertisement apparently included other oral and written identifying information, it  
20 does not seem that the public would have been misled as to who paid for and approved the

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<sup>1</sup> In addition, the complainant asserts that the advertisements fail to include the disclaimer required when a public communication is paid for by an authorized committee, pursuant to 11 C.F.R. § 110.11(b)(1), but acknowledges that the advertisements included the written statement "Paid for by Durston for Congress." It is unclear from the complaint what aspect of the disclaimer is alleged to be defective. We note that neither the complainant nor the respondents provided copies of the advertisements at issue. Furthermore, the staff was unable to access the referenced websites and, therefore, unable to determine which, if any, of the approximately 78 videos posted on Youtube.com, featuring Dr. Durston, were the advertisements to which the complainant objected.

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advertisement. Thus, any violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11, under these circumstances, would have been technical in nature and unintentional. Thus, in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


**RECOMMENDATIONS**

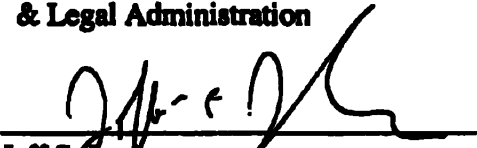
The Office of General Counsel recommends that the Commission dismiss MUR 6109 as to Bill Durston, Durston for Congress and Rita Copeland, in her official capacity as treasurer, close the file, and approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

ce/30/07  
Date

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